

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Administration of the North American Numbering Plan)	CC Docket No. 99-200
)	
Millicorp Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources)	
)	

To: Chief, Wireline Competition Bureau

PETITION FOR LIMITED WAIVER

Millicorp hereby respectfully requests that the Wireline Competition Bureau (“Bureau”) grant Millicorp a limited waiver of Section 52.15(g)(2)(i) of the rules of the Federal Communication Commission (“FCC” or “Commission”)¹ to allow Millicorp to obtain numbering resources directly from the North American Numbering Plan (“NANP”) Administrator (“NANPA”) and/or the Pooling Administrator (“PA”) in a manner comparable to the waiver granted to SBC Internet Services, Inc. (“SBCIS”).² Millicorp intends to use these numbering resources to deploy IP-enabled services, including interconnected Voice over Internet Protocol (“VoIP”) services, on a commercial basis to residential and business customers.

I. INTRODUCTION

Millicorp is a provider of wholesale and retail interconnected and non-interconnected VoIP applications and services based out of Fort Myers, Florida. Millicorp provides a range of VoIP services to both consumers and small- and medium-sized businesses, including other VoIP companies. All of the products and services provided by Millicorp are developed by its seasoned

¹ 47 C.F.R. § 52.15(g)(2)(i).

² *Administration of the North American Numbering Plan*, Order, CC Docket 99-200, 20 FCC Rcd 2957 (2005) (“*SBCIS Waiver Order*”).

in-house development staff who have over 60 years of combined programming and application development experience. Millicorp's initial VoIP offering, ConsCallHome.com, provides services to the friends and family members of inmates to reduce the cost to the inmates of calling their friends and families. In addition, Millicorp provides a variety of wholesale service offerings to other VoIP providers through its MilliVox division. Further and most recently, Millicorp released MilliTalk, a consumer mobile VoIP application that provides low-cost calling using a mobile subscriber's data service, including access from multiple devices, visual voicemail, and other innovative features.³

As discussed further below, good cause exists to grant this limited waiver because it will allow Millicorp to develop and deploy innovative new services more cost effectively and using a more efficient means of interconnection with the Public Switched Telephone Network ("PSTN"), thereby better serving its customers. Millicorp requests that the Commission waive application of Section 52.15(g)(2)(i) to Millicorp in a manner comparable to the waiver that the Commission granted to SBCIS. Millicorp requests for the waiver to remain in effect until the Commission adopts final numbering rules applicable to IP-enabled services through a proceeding of general applicability.⁴

II. BACKGROUND

Millicorp, like other VoIP providers, obtains access to telephone numbers by purchasing Primary Rate Interface ("PRI") or Direct Inward Dialing ("DID") services from competitive local exchange carriers ("CLEC"). Millicorp assigns these telephone numbers to its customers to enable them to use Millicorp's services and applications over the customers' existing broadband IP networks to call third parties served by carriers operating time division multiplexed

³ See <http://www.conscallhome.com/> and <http://www.millitalk.com> for more information.

⁴ See, e.g., *IP-Enabled Services*, Notice of Proposed Rulemaking, WC Docket No. 04-36, 19 FCC Rcd 4863 (2004) ("*IP-Enabled Services NPRM*").

(“TDM”) networks within the Public Switched Telephone Network (“PSTN”). Absent such telephone numbers, Millicorp’s customers would not be able to receive calls from the PSTN.

As is typical with VoIP providers, Millicorp also uses PRI services to interconnect with the PSTN. Under this arrangement, a CLEC terminates Millicorp’s VoIP traffic on the PSTN or delivers the traffic to another carrier for termination on the PSTN. If Millicorp were permitted to obtain numbering resources directly from NANPA or the PA, Millicorp would no longer be required to purchase PRI services from CLECs merely to obtain numbering resources. As a result, Millicorp could avoid paying a third party’s mark-up on numbering resources, which is an unnecessary cost that Millicorp ultimately must pass through to its customers. These increased costs hamper Millicorp’s ability to compete on a level playing field with traditional telephony providers and increase costs to consumers. Further, if Millicorp were no longer required to purchase PRI to obtain numbering resources, Millicorp also would be able to consider alternative mechanisms for obtaining interconnection to the PSTN for its VoIP customers, which may improve Millicorp’s interconnection efficiency and reduce Millicorp’s costs, thereby enabling Millicorp to pass these cost savings through to its customers.⁵

Currently, Section 52.15(g)(2)(i) effectively prohibits VoIP providers like Millicorp from acquiring telephone numbers directly from NANPA or the PA. Specifically, this rule requires that applicants requesting NANP numbering resources be “authorized to provide service in the area for which the numbering resources are being requested.”⁶ The rule has been interpreted by the Commission to require “carriers [to] provide, as part of their applications for initial numbering resources, evidence (*e.g.*, state commission order or state certificate to operate as a

⁵ For example, alternative tandem providers, such as Neutral Tandem, Inc., offer competitive tandem services that Millicorp may choose to employ as an alternative to purchasing PRI if Millicorp is not required to purchase PRI for purposes of obtaining numbering resources. *See* Comments of Neutral Tandem, Inc. in Support of Vonage’s Petition for Waiver of the Commission’s Rules Regarding Access to Numbering Resources, CC Docket No. 99-200, filed January 25, 2012 (“*Neutral Tandem Comments*”).

⁶ 47 C.F.R. § 52.15(g)(2)(i).

carrier) demonstrating that they are licensed and/or certified to provide service in the area in which they seek numbering resource[s].”⁷ Millicorp is not a state-certificated common carrier, and therefore currently cannot obtain numbering resources directly from NANPA and/or the PA without a waiver of the Commission’s rules.⁸

III. DISCUSSION

A. *THERE IS GOOD CAUSE TO GRANT MILLICORP’S REQUEST FOR A LIMITED WAIVER*

The Commission may waive a rule when “good cause” is demonstrated.⁹ Under the good cause standard, the Bureau may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁰ In considering a waiver request, the Bureau may take into account considerations of hardship, equity, or the more effective implementation of overall policy on an individual basis.¹¹ Thus, waiver of the Commission’s rules is appropriate when special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.¹²

Special circumstances warrant deviation from the general rule limiting the assignment of numbering resources to state-certified carriers. In granting SBCIS’ waiver request, the Commission noted that, absent the waiver, SBCIS would have to partner with a LEC to obtain NANP telephone numbers and found that the waiver would “help expedite the implementation of

⁷ *Numbering Resources Optimization*, Report and order and Further Notice of Proposed Rulemaking, CC Docket No. 99-200, 15 FCC Rcd 7574, 7615 ¶ 97 (2000).

⁸ The Commission has also found Vonage’s service, which is similar to certain services that Millicorp offers, to be an interstate service. *See Vonage Holdings Corporation*, Memorandum Opinion and Order, WC Docket No. 03-211, 19 FCC Rcd 22404, 22413 ¶ 18 (2004). As with Vonage, seeking various state certifications would be impractical for Millicorp and inconsistent with the efficient provision of VoIP services.

⁹ 47 C.F.R. § 1.3; *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (“*WAIT Radio*”).

¹⁰ *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”).

¹¹ *Id.*; *WAIT Radio*, 418 F.2d at 1159.

¹² *See Northeast Cellular*, 897 F.2d at 1166.

IP-enabled services that interconnect to the PSTN; and enable SBCIS to deploy innovative new services and encourage the rapid deployment of new technologies and advanced services that benefit American consumers.”¹³

Grant of Millicorp’s waiver request would serve the same goals by allowing Millicorp to deploy in a cost-effective manner innovative new services that ultimately will benefit consumers. Grant of the waiver petition will eliminate an unnecessary cost of doing business, which will allow Millicorp to offer more beneficial pricing. Further, as the Commission has noted, “IP-enabled services generally – *and VoIP in particular* – will encourage consumers to demand more broadband connections, which will foster the development of more IP-enabled services.”¹⁴ Thus, by providing Millicorp with direct access to numbering resources, the Commission can encourage innovation, foster competition, and encourage the deployment of broadband infrastructure, all of which supports goals articulated in the National Broadband Plan.¹⁵ Accordingly, good cause exists to grant Millicorp’s request for limited waiver, and such grant will serve the public interest.

B. MILLICORP WILL COMPLY WITH ALL RELEVANT SAFEGUARDS

In granting SBCIS’ petition for waiver, the Commission noted that it would grant similar relief “to an extent comparable” to what the Commission set forth in the *SBCIS Waiver Order*.¹⁶ Millicorp commits to complying with all the conditions set forth in *SBCIS Waiver Order* should the Commission grant Millicorp’s request. Specifically, Millicorp will commit to the following conditions as imposed on SBCIS:

¹³ *SBCIS Waiver Order* ¶ 4.

¹⁴ *IP-Enabled Services NPRM*, 19 FCC Rcd at 4867 ¶ 5 (emphasis added).

¹⁵ See, e.g., FEDERAL COMMUNICATIONS COMMISSION, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN at 25 (categorizing certain recommendations to “[d]esign policies to ensure robust competition and, as a result, maximize consumer welfare, innovations and investment.”).

¹⁶ *SBCIS Waiver Order* ¶ 4.

- Compliance with the Commission’s other numbering utilization and optimization requirements, numbering authority delegated to the states and industry guidelines and practices, including filing the Numbering Resource Utilization and Forecast Report (“NRUF”).
- With respect to the facilities-readiness condition, Millicorp commits to complying with any clarification of this requirement issued by the Commission within a reasonable time after favorable grant of the waiver request and before requesting numbering resources.¹⁷
- The filing of any request for numbers with the Commission and the relevant state commission at least thirty days prior to requesting numbers from the NANPA or the PA to the extent that such a requirement is imposed by the Commission.¹⁸

Millicorp also agrees to comply with any other conditions or safeguards that the Commission imposes on other VoIP providers that are granted waivers to obtain numbering resources directly.

¹⁷ See, e.g., Letter from Brita D. Strandberg and Rachel W. Petty, Wiltshire & Grannis, LLP, counsel to Vonage Holdings Corp., to Marlene H. Dortch, Secretary, FCC, filed Feb. 9, 2012, in CC Docket No. 99-200, at 4 (discussing potential means of applying the facilities-readiness requirement to VoIP and seeking clarification of same); see also *Neutral Tandem Comments* at 3 (stating that “market-based alternatives now exist to ILEC tandem interconnection” and therefore VoIP providers “should not be restricted to obtaining interconnection services from an ILEC in order to satisfy a ‘facilities readiness’ condition,” but instead “should be allowed to obtain those services from alternative tandem providers”).

¹⁸ AT&T, the successor parent of SBCIS, has asked the Commission to eliminate this 30-day notice period with respect to numbering waiver requests filed by VoIP providers, such as the instant waiver request. According to AT&T, “The Commission never explained why this 30-day filing obligation was imposed, and AT&T contends that, if it ever served any purpose, it no longer does. Indeed, during the nearly seven years since AT&TIS received its numbering waiver, this 30-day advance filing requirement has served only to burden AT&TIS with additional paperwork and prevent it from obtaining access to numbering resources in the same timely manner as its competitors.” See Comments of AT&T Inc., CC Docket No. 99-200, at 4 (filed Jan. 25, 2012). Millicorp supports AT&T’s position with respect to this matter and requests that the FCC not impose this requirement on grant of the instant waiver request, but nevertheless will comply with it if it is imposed.

Additionally, Millicorp's request for waiver is limited in duration. Millicorp requests the waiver only until the Commission adopts final numbering rules regarding IP-enabled services. Further, granting the waiver will not prejudice the outcome of the *IP-Enabled Services NPRM*, as the Commission maintains its discretion to take any action that it finds necessary in that proceeding.¹⁹

C. *THE BUREAU SHOULD PROMPTLY GRANT THE LIMITED WAIVER*

The Commission has noted the benefits that VoIP providers have provided to consumers and that "the changes wrought by the rise of IP-enabled communications promise to be revolutionary."²⁰ The waiver will allow Millicorp to offer lower prices to consumers of its VoIP services. As noted above, the Commission has suggested that the deployment of VoIP in particular can help encourage demand for more broadband connections, which will, in turn, foster the development of more IP-enabled services.²¹ Further, the Commission has noted that "market entry by [VoIP] service providers ... appears to have spurred deployment of IP-enabled voice services by established telephony providers."²² Allowing Millicorp to obtain numbering resources directly from NANPA and/or the PA will allow Millicorp to deploy innovative IP-based services and to compete vigorously with established telephony providers on a level playing field. Prompt action by the Commission on this waiver request will expedite the realization of each of these public interest benefits.

¹⁹ Where doing so would serve the public interest, Bureaus have routinely granted waivers of Commission rules pending the outcome of rulemaking proceeds. *See, e.g., Southwestern Bell Telephone Company Petition for Waiver of Part 69 of the Commission's Rules*, Memorandum Opinion and Order, DA 91-1258 (rel. Oct. 4, 1991); *Pacific Telesis Petition for Exemption from Customer Proprietary Network Information Notification Requirements*, Order, DA 96-1878 (rel. Nov. 13, 1996); *LoJack Corporation Request for Waiver of Section 90.20(e)(6) of the Commission's Rules*, Order, DA 00-1987 (rel. Aug. 31, 2000).

²⁰ *IP-Enabled Services NPRM*, 19 FCC Rcd at 4867 ¶ 5.

²¹ *Id.*

²² *Id.* at 4874 ¶ 12.

IV. CONCLUSION

For the reasons stated above, the Bureau promptly should grant Millicorp's request for limited waiver of Section 52.15(g)(2)(i).

Respectfully submitted,

MILLICORP, LLC

By: /s/ Phil Marchesiello
Phil Marchesiello

Wilkinson Barker Knauer, LLP
2300 N Street, NW, Suite 700
Washington, DC 20037
202.783.4141

Its Attorneys

March 14, 2012